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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,606	03/29/2004	Mark A. Neilson	136.0140001	2825

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BROOKS, CAMERON & HUEBSCH, PLLC
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MINNEAPOLIS, MN 55403

EXAMINER

BRINEY III, WALTER F

ART UNIT	PAPER NUMBER
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2615

MAIL DATE	DELIVERY MODE
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09/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/811,606	Applicant(s) NEILSON, MARK A.	
	Examiner Walter F. Briney III	Art Unit 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claims 1-4, 6, 10-12, 16 and 17 are rejected under 35 U.S.C. 103(a) as being anticipated by Carbe et al. (US Patent 5,278,360).**

Claim 1 is limited to “a customizable cerumen guard for a hearing aid.” Aside from the new limitation discussed below, all limitations are rejected for the same reasons presented in the previous Non-Final Office Action filed 20 March 2007. The applicant has currently amended this claim to recite that the chamber within the insert is “adapted to directly receive a cerumen-trapping accessory.” Applicant argues that this is in contrast to the disclosure of Carbe, who discloses an insert 12 having a chamber therein that receives a second chamber 46 holding a cerumen trapping accessory 70/72. In the previous Office Action, the chamber of insert 12 was referred to by numeral 46. It is true that numeral 46 represents the chamber defined by the inner circumference of the leg of cap 14. However, chamber 46 is still entirely disposed within the confines of insert 12, which makes it a chamber of insert 12 in much the same way a separately enclosed bedroom entirely located within a house is said to be a chamber of that house. Therefore, Carbe anticipates all limitations of the claim.

Claims 2-4, 6, 10-12, 16 and 17 are each rejected for the same respective reasons provided in said Non-Final Office Action as well as the reasons presented above apropos the new limitation of directly inserting a cerumen trapping accessory into the chamber of the insert. Therefore, Carbe anticipates all limitations of the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 7-9, 13-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carbe in view of Haertl (US Patent 4,987,597).**

Claims 7-9, 13-15 and 18-20 are each rejected for the same respective reasons provided in said Non-Final Office Action as well as the reasons presented above apropos the new limitation of directly inserting a cerumen trapping accessory into the chamber of the insert. Therefore, Carbe anticipates all limitations of the claims.

Response to Arguments

Applicant's arguments filed 18 June 2007 have been fully considered but they are not persuasive.

The applicant's allegations regarding the new limitation have been treated thoroughly supra apropos the rejection of claim 1.

The applicant further alleges on page 7, lines 6-8, that “the wax guard insert 14 does not appear to anticipate the insert as claimed since the wax guard insert 14 does not appear to include a plurality of customizable, interchangeable caps covering the ear canal aperture, as claimed in claims 1, 10 and 16.” Respectfully, wax guard insert 14 was never taken in the rejections as the claimed “insert.” Rather, wax guard insert 14 represents the claimed “cap.” Page 2 of said Non-Final Office Action indicates two lines from the bottom of page 2 that the cap is replaceable, implying that Carbe anticipated using a plurality of interchangeable caps. Moreover, the last line of page 2 and the first two lines of page 3 indicate that the caps are customizable with filters 70/71, which actually correspond to the insertable cerumen-trapping accessories that are inserted into the chamber of “insert” 12 that is defined by the enclosure of cap 14. In this way, the filters are customizing the caps by being inserted directly into a chamber of the insert.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/wfb/

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A handwritten signature in black ink, appearing to read 'Sinh Tran', with a stylized, flowing script.

SINH TRAN
SUPERVISORY PATENT EXAMINER